

# The Indiana Prosecutor

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Indiana Statehouse  
Indianapolis, Indiana

## RECENT DECISION TOPICS

- *Bowles v. State* - Yet Another Trash Search Case
- *Abney v. State*— Does *Blakely* Apply After *Booker* and *Fanfan*?



### Indiana

#### • Yet Another Trash Search Case

*Bowles v. State*, 820 N.E.2d 739 (Ind. Ct. App. 1/14/05). Four times in 2004, the Indiana Court of Appeals has reviewed cases in which a defendant has alleged that the police violated the defendant's constitutional rights when they seized and searched his or her trash. And, in the first month of 2005, yet another trash search case was decided.

The Indianapolis Police Department received word that Darius Bowles was dealing cocaine from his condominium. After confirming that regular trash collection for the condominium complex in which Bowles lived was scheduled for the following day, an IPD detective went to Bowles' residence and there observed that trash had been set out for collection. The trash was sitting next to a common mailbox for the condominiums in the area. The mailbox was located at the end of Bowles' driveway. At the hearing held after Bowles filed his motion to suppress the evidence found in his home, the detective testified that he approached the mailboxes as if he were getting his mail and took two trash bags from the trash cans at that location without leaving the common area where the mailboxes were situated. Photos taken on the day the trash was taken, however, revealed that there was a significant amount of snow on the ground that day, and it would, therefore, have been impossible for the detective to know if he stepped onto Bowles' property to retrieve the trash or not. Inside the trash bags taken, the police found marijuana seeds and stems, numerous plastic baggies with corners torn off, approximately 25 baggies that had been ripped open and contained a powdery cocaine residue, a piece of mail bearing Bowles' address and a sales receipt bearing Bowles' name. Based upon the evidence found in the trash, law enforcement got a search warrant for Bowles' residence. The search of Bowles' residence the next day turned up cocaine marijuana, alprazolam and a glock 23 semi-automatic weapon and a shotgun.

Bowles argued on appeal that his trash was searched and seized in violation of Article One Section Eleven of the Indiana Constitution. The Court of Appeals did not agree. The Court concluded that if the detective did actually step onto Bowles' property to get the trash, he only had to go one to two feet onto the defendant's property to do so. Bowles had placed his trash out for collection, the Court noted. The detective who picked up the bags did so in a manner consistent with those whose duty it was to pick up the garbage bags for collection. And, there was no indication that the actions of the detective disturbed Bowles' neighbors in any way. The Court of Appeals agreed with the State that the search and

seizure of Bowles' trash was reasonable under the totality of the circumstances and did not, therefore, violate Article One Section 11.

#### • Does Blakely Apply After *Booker* and *Fanfan*?

*Abney v. State* \_\_\_ N.E.2d \_\_\_ (Ind. Ct. App. 2/15/05). Indiana prosecutors and defense attorneys are still awaiting the Indiana Supreme Court's opinion that will determine whether Indiana's sentencing scheme is constitutional after the U.S. Supreme Court's *Blakely v. Washington* opinion last year. In *Blakely*, the U.S. Supreme Court held that the Sixth Amendment requires a jury to determine beyond a reasonable doubt the existence of aggravating factors used to increase the sentence for a crime above the presumptive sentence assigned by the legislature. Specifically, the Court held that "other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the statutory maximum must be submitted to a jury and proved beyond a reasonable doubt." After oral argument was heard before the Indiana High Court, the U.S. Supreme Court decided, in *United States v. Booker*, that the Federal Sentencing Guidelines were unconstitutional after *Blakely*. The remedy, however, the U.S. Court said, was not to scrap the entire Guideline system but to make the Guidelines advisory, not mandatory instead.

On February 15, the Indiana Court of Appeals was asked to determine whether, in light of *Booker*, Indiana's sentencing scheme was impacted by the earlier *Blakely* decision. They did so in *Abney v. State*. The majority of the panel asked to review *Abney* concluded that "the Supreme Court's recent opinion in *United States v. Booker* did not alter the *Blakely* rule as it applies in Indiana. The majority rejected the State's argument that the presumptive sentence, under Indiana's sentencing statutes, serves only as a sentencing guidepost. Consistent with earlier decisions, the Court held that "*Blakely* prohibits our trial courts from imposing a sentence greater than the presumptive one based on a factor not admitted by the defendant or submitted to the jury and proven beyond a reasonable doubt."

Of great interest in the *Abney* opinion is the dissenting opinion of Judge Robb. Noting that *Booker* specifically states that discretionary sentencing schemes do not implicate the Sixth Amendment, Judge Robb concluded that Indiana's sentencing scheme passes constitutional muster. Robb concluded that "what remains of the federal Guidelines following *Booker* is substantially similar to Indiana's existing sentencing scheme.